

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

Commonwealth Edison Company	:	
	:	Docket 10-0467
Proposed general increase in electric	:	
rates. (Tariffs filed on June 30, 2010)	:	

**THE CITY OF CHICAGO'S  
REPLY TO BRIEFS ON EXCEPTIONS**

**THE CITY OF CHICAGO**

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**Dated: April 18, 2011**

**DOCKET NO. 10-0467**  
**THE CITY OF CHICAGO’S REPLY TO BRIEFS ON EXCEPTIONS**  
**COMMON BRIEF OUTLINE**

<b>VII.</b>	<b>COST OF SERVICE AND ALLOCATION ISSUES .....</b>	<b>2</b>
<b>A.</b>	<b>OVERVIEW .....</b>	<b>2</b>
<b>C.</b>	<b>POTENTIALLY CONTESTED ISSUES .....</b>	<b>5</b>
1.	EMBEDDED COST OF SERVICE STUDY ISSUES .....	5
D.	NCP vs CP .....	5
E.	ALLOCATION OF PRIMARY LINES AND SUBSTATIONS .....	5
I.	INDIRECT UNCOLLECTIBLE COSTS AND COLLECTIBLE COSTS.....	9
<b>VIII.</b>	<b>RATE DESIGN.....</b>	<b>11</b>
<b>C.</b>	<b>POTENTIALLY CONTESTED ISSUES .....</b>	<b>11</b>
1.	SFV (COMED PROPOSAL).....	11
4.	NON-RESIDENTIAL.....	13
D.	DUSK TO DAWN STREET LIGHTING.....	13
<b>XI.</b>	<b>CONCLUSION .....</b>	<b>16</b>

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Pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (Commission or ICC) and the briefing schedule established by the Administrative Law Judges, the City of Chicago (City), by its attorney, Mara S. Georges, Corporation Counsel, submits its Reply to Briefs on Exceptions (Reply Exceptions) in this proceeding. The City's Brief on Exceptions responds to the briefs on exceptions filed by Commonwealth Edison Company (ComEd) and the Illinois Industrial Energy Consumers (IIEC). The City's Reply Exceptions also refers to the briefs on exceptions filed by the Commission Staff (Staff), the Citizens Utility Board (CUB, the Illinois Attorney General's Office (the AG), the Environmental Law and Policy Center (ELPC), the Natural Resources Defense Council (NRDC), and the Coalition to Request Equitable Allocation of Costs Together (REACT).

The City's Reply Exceptions is organized according to the common brief outline agreed to by Staff and the parties to this case. For sake of brevity and ease of reference, the City's brief includes only the section numbers of the issues addressed herein.

## **VII. COST OF SERVICE OF SERVICE AND ALLOCATION ISSUES**

### **A. OVERVIEW**

ComEd begins its discussion of the cost-of-service section of its Brief on Exceptions with the claim that it is indifferent when it comes to costs studies and rate design. ComEd BOE at 71-72. ComEd asserts that cost of service, cost allocation, and rate design are “revenue-neutral” exercises for the utility. *Id.* at 72. According to ComEd, has nothing to gain by manipulating a cost study or designing rates in a manner that benefits one rate class over another. *Id.* The import of ComEd’s point seems to be that because of the utility’s self-proclaimed neutrality, its positions are imbued with some sort of veracity. That is clearly not the case.

Even assuming that ComEd’s claim that it has no vested interest in the rate design and cost allocation decisions made in this case were true – which, as described below, it is not – the utility’s supposed neutrality does not mean that its rate design and cost allocation positions are accurate. One only needs to look at the Commission’s Order in Docket 08-0532<sup>1</sup> to know that that is the case. In that proceeding, ComEd made similar arguments about its supposed neutrality on rate design and cost allocation matters. *See, e.g.,* Rate Design Investigation, ComEd Initial Brief at 3. Despite the utility’s alleged indifference to the results of the cost allocation and rate design decisions, the Commission rejected several of ComEd’s arguments on many of the issues in the Rate Design Investigation.

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<sup>1</sup> Docket 08-0532 was initiated on the same day the Commission entered its Order in ComEd’s prior rate case, Docket 07-0566. In its Order in the rate case, the Commission found that “the substantial deficiencies in specific elements of [ComEd’s embedded cost of service study] render it problematic for purposes of rate setting in this docket.” *In re Commonwealth Edison Company*, I.C.C. Docket 07-0566, Final Order at 213 (Sep. 10, 2008). Because of the numerous deficiencies it found with respect to ComEd’s cost study in the rate case, the Commission initiated an investigation of ComEd’s rate design in Docket 08-0532. That case is referred to hereinafter as the “Rate Design Investigation.”

For example, ComEd, IIEC, and other parties argued that the utility should allocate the costs of substations and primary lines using the non-coincident peak (NCP) method. The City and Commission Staff argued that the coincident peak (CP) method should be used to allocate those facilities. The Commission agreed with Staff and the City, concluding that “We are persuaded that the allocation costs to substations and primary lines should be made on a CP basis.” Rate Design Investigation Order at 55.

The NCP versus CP issue is but one example in the Rate Design Investigation case where the Commission disagreed with ComEd’s position. That example – and others – demonstrate that even if ComEd’s claims of neutrality in cost allocation and rate design issues were true, its positions are not imbued with accuracy.

Moreover, at least with respect to residential rate design, City witness Edward C. Bodmer showed that ComEd’s assertions that it has no agenda when setting rates is not true. ComEd proposes that the Commission adopt what it terms a “straight fixed variable” (SFV) rate design for setting residential rates. The SFV rate design would dramatically increase residential customers’ customer charge. If ComEd’s preferred version of the SFV rate design were adopted, eventually 80% of the distribution costs the utility incurs would be recovered through the customer charge, a charge that does not vary with usage. In other words, the customer charge does not change no matter how much electricity a residential customer uses. Thus, a single-family no-heat customer who uses 0 kWhs during a billing period would pay the same customer charge as a single-family no-heat customer who uses 1,000 kWhs in a month.

Contrary to ComEd’s claim that it is indifferent as to cost of service and rate design issues, City witness Edward C. Bodmer showed that a high customer charge

would benefit ComEd in at least two ways. Mr. Bodmer testified that “First, it allows utility companies to lower [their] cost of capital by reducing cash flow volatility that comes from variability in sales volumes. Second, by cutting incentives to conserve electricity, it promotes demand growth ....” City Ex. 1.0 at 4, LL 62-64. Mr. Bodmer added that ComEd witness Ross C. Hemphill conceded the first point in the Rate Design Investigation. Discussing why low customer charges have “undesirable effects,” Dr. Hemphill said that the “[f]oremost [problem with low customer charges] is the resulting *destabilization of utility revenues* and utility cost recovery, which ultimately has an impact on all other customers on the ComEd system.” *Id.* at 30, LL 577-81, *quoting*, Rate Design Investigation, ComEd Ex. 4.0 at 14, LL 305-08 (emphasis added). The obvious converse of Dr. Hemphill’s statement from the rate Design Investigation case is that high customer charges *stabilize utility revenues*.

In sum, ComEd’s efforts to imply that its supposed neutrality mean that its positions should be afforded additional weight should be rejected. History shows that the Commission has rejected ComEd’s positions despite the utility’s supposed indifference on cost allocation and rate design issues. Further, Mr. Bodmer demonstrated that, at least with respect to residential rate design, ComEd’s claims of neutrality are false.

## VII. COST OF SERVICE AND ALLOCATION ISSUES

### C. POTENTIALLY CONTESTED ISSUES

#### 1. EMBEDDED COST OF SERVICE STUDY ISSUES

d. *NCP vs. CP*

e. *ALLOCATION OF PRIMARY LINES AND SUBSTATIONS*<sup>2</sup>

Any discussion of whether to use the NCP or CP methodology to allocate the costs of substations and primary lines among ComEd's various rate classes must begin with the Commission's Rate Design Investigation. Docket 08-0532 was initiated on September 10, 2008. The Commission's Final Order was issued on April 22, 2010. Thus, the Commission spent 18 months investigating several aspects of ComEd's rate design, including the NCP versus CP issue. ComEd, IIEC, and the Commercial Group argued in favor of the NCP methodology. Rate Design Investigation Order at 45. Staff and the City were on the other side, arguing that the Commission adopt the CP method. *Id.* at 44-46, 49-51. The Commission accepted Staff's and the City's arguments and adopted the CP methodology. *Id.* at 55. In particular, the Commission concluded

Individual substations and primary lines are not constructed to serve customers within any single class but rather to serve customers from numerous classes. This means that a substation or primary line is not sized to meet the demands of any single class, but rather the collective demands of customers from numerous classes. Lighting peak demand generally does not coincide with peak demands for the system as a whole. Thus, peak lighting demands should not play the same role in shaping substation and primary line investments as the demands by classes with higher demands at the time of system peak demands.

We are persuaded that the allocation costs to substations and primary lines should be made on a CP basis.

*Id.*

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<sup>2</sup> Because the topics "NCP vs. CP" and "Allocation of Primary Lines and Substations" concern the same issues, the City addresses these topics in the same section of this brief.

Staff witness Philip Rukosuev noted that the NCP vs. CP issue was “reviewed at length” in the Ameren Illinois Utilities’ (Ameren) most recent rate cases. Staff Ex. 28.0 at 19-20, LL 448-69. Mr. Rukosuev explained that the Ameren utilities and IIEC advocated use of the NCP allocator while Staff argued for the CP method. *Id.* at 19-20, LL 450-58. In its Order in the Ameren rate cases, the Commission found

Because the demands of multiple classes on primary lines and substations more closely correspond to CP rather than NCP demands, the Commission agrees with Staff that the most reasonable, cost-based approach is to allocate the cost of this equipment according to the collective peak demands of all rate classes.

*In re Central Illinois Light Company, et al.*, I.C.C. Dockets 09-0306 through 09-0311 (consol.) Order at 237 (April 29, 2010).

Despite this recent history in which the Commission has made clear its preference for the CP allocator, IIEC takes exception to the Proposed Order’s decision to “not deviate from these past decisions.” Proposed Order at 188. IIEC notes that REACT and the Commercial Group also argued for use of the NCP methodology. IIEC BOE at 42-43. However, neither of those parties took exception to the Proposed Order’s conclusion adopting and confirming use of the CP methodology to allocate the costs of substations and primary lines. It is left to IIEC to continue the fight.

To defend its position, IIEC asserts that there was testimony in this case that warrants the Commission taking the drastic step of reversing course and deciding to use the NCP method to allocate primary lines and substations. *Id.* at 43-46. In particular, IIEC cites to testimony submitted by its witness David L. Stowe, REACT witness Harry L. Terhune, ComEd witness Michael B. McMahan, and Staff witness Rukosuev as the basis for its position that the Commission should adopt the NCP allocator. *Id.* The



problem for IIEC is that, whatever these witnesses said, other than Mr. Stowe, the parties for whom the other witnesses testified either took no position on the NCP v. CP issue, did not take exception to the Proposed Order's conclusion adopting the CP methodology, or affirmatively advocated for use of the CP allocator.

Mr. Terhune testified on behalf of REACT. REACT did not take exception to the Proposed Order's conclusion. Mr. McMahan testified on behalf of ComEd. ComEd decided to comply with the Commission's Rate Design Investigation Order, stating that it "is not arguing the issue again in this proceeding." ComEd BOE at 86. As to Mr. Rukosuev, he concluded that the Commission "should **not** reverse course with respect to its preference for the CP methodology." Staff Ex. 28.0 at 19, LL 446-48. Thus, no matter what these witnesses may have said, the parties for whom they testified are at odds with IIEC's position.

IIEC also tries to denigrate the Proposed Order's reliance on ComEd witness Dr. Ross C. Hemphill's testimony in reaching its conclusion. IIEC BOE at 47. IIEC claims that Dr. Hemphill's testimony should be given less weight because he is not an engineer. *Id.* However, the Proposed Order correctly noted that Dr. Hemphill's testimony is appropriate because "This issue concerns cost allocation. The IIEC has made no showing establishing that Dr. Hemphill is unqualified to testify regarding cost allocations." Proposed Order at 189.

The testimony that IIEC finds troubling was summarized by Staff in its Initial Brief. There, citing to a portion of the cross-examination of Dr. Hemphill in this docket, Staff stated

Mr. Hemphill testified that: a) as a general rule, distribution facilities are sized to meet summer rather than winter demands

(Tr., January 10, 2011, p. 303, emphasis added); b) distribution systems are designed to meet local peak conditions (Tr. January 10, 2011, pp. 300-301) c) it's [*sic*] the demands that are expected from the customers that are within that area that is served that drives the level of the facility investment (*Id.*, p. 301) d) local demands can include the demands of customers from a variety of rate classes, if they all use those local facilities (Tr., January 10, 2011, pp. 303-304); and e) ComEd's system peaks in summer usually in the mid-afternoon when street lighting demands are below their night time peak (Tr., January 10, 2011, pp. 305-306). In addition, on the role of summer peak demands in sizing distribution facilities, Mr. Hemphill testified that he considers most distribution facilities sized to meet summer rather than winter demands. (Tr., January 10, 2011, pp. 303)

Staff Initial Brief at 106. Staff went on to argue that, taken together, Dr Hemphill's "statements clearly indicate that demands for distribution substations and primary lines are more likely to coincide with system peak demands (summer peak demands), than with the demands of individual rate classes, such as lighting customers, which occur during off-peak periods, thus, undermining [IIEC witness] Stowe's claim that 'it relies on NCP demands when designing shared circuits and substations.'" *Id.* at 106-07.

IIEC also asserts that the Commission used the NCP methodology prior to its Rate Design Investigation Order. IIEC BOE at 47-48. Whatever the merits of that claim, City witness Bodmer noted that ComEd used the CP method to allocate the costs of substations and primary lines in a prior ComEd delivery services rate case. Specifically, ComEd witness Lawrence S. Alongi testified in Docket 01-0423 that

For each of the customer classes, two distribution capacity components were identified, the non-coincident class peak ("NCP") component and the coincident peak component. The NCP component ... includes the costs for standard system elements that are likely to be sized to accommodate individual customers' maximum loads. ... **The coincident peak component, on the other hand, includes the costs for standard system elements necessary to serve a geographic area or larger group of customers that can be sized with consideration given to**

**diversity between individual customers' loads. ... [T]he investment costs of Transmission Distribution Centers ("TDCs"), 34 kV lines, Distribution Centers ("DC"), primary lines, and primary taps were included in the coincident peak component.**

City Ex. 2.0 (Rev.) at 11, LL 212-25, *quoting*, Docket No. 01-0423, ComEd Ex. 13.0 at 16-17, LL 345-363 (emphasis added). Mr. Alongi's testimony in Docket 01-0423 is consistent with Dr. Hemphill's testimony in this case and supports the Commission confirming its decision in the Rate Design Investigation to use CP to allocate primary lines and substations.

In sum, none of IIEC's arguments has merit. Similar arguments were made in the Rate Design Investigation case. The Commission rejected those arguments in that case and should do so again here. The Commission should confirm the decisions it made in the Rate Design Investigation case and the Ameren rate case that the CP methodology should be used to allocate primary lines and substations.

## **VII. COST OF SERVICE AND ALLOCATION ISSUES**

### **C. POTENTIALLY CONTESTED ISSUES**

#### **1. EMBEDDED COST OF SERVICE STUDY ISSUES**

##### *1. INDIRECT UNCOLLECTIBLE COSTS AND UNCOLLECTIBLE COSTS*

In its Brief on Exceptions, ComEd states that it takes exception to the Proposed Order's conclusion that it should segregate indirect uncollectible costs in its rate case "solely to seek clarification." ComEd BOE at 87. The basis for ComEd's confusion appears to be that, according to the utility, Mr. Bodmer's examples of indirect uncollectible costs are "a loose, high-level description of what he would do to produce an analysis identifying and quantifying the indirect uncollectible costs." *Id.* ComEd then suggest that the Proposed Order be "modified to require ComEd to examine the issue

further but not to include segregated indirect uncollectible costs as part of an ECOSS or in ComEd's next rate case filing or rate design proceeding ...." *Id.* ComEd's proposed modification eviscerates the Proposed Order's conclusion and should be rejected.

Mr. Bodmer testified that indirect uncollectible costs include the costs "of collecting, administering, managing, disconnecting, and reconnecting uncollectible accounts." City Ex. 1.0 at 63, LL 1235-36. The relationship between uncollectible costs and these types of expenses is self-evident. The very definition Mr. Bodmer provided of the types of costs that should be considered indirect uncollectible costs states that they are all related to uncollectible accounts. It is not clear what more precise definition or explanation ComEd needs.

In any event, it certainly does not warrant delaying implementing Mr. Bodmer's recommendation so that ComEd can "examine the issue further." There is no reason for such an examination. Moreover, as the Proposed Order stated with respect to the issue of whether ComEd complied with certain aspects of the Commission's Rate Design Investigation Order

Finally, when the Commission issues an Order, it is not for [anyone] at ComEd, to determine the necessity of what is mandated in that order. If ComEd has questions about the meaning of that order, it can file a petition for rehearing regarding that language, or, it can file a motion seeking clarification. It can also file an appeal to the appellate court, if it objects to any language in a Commission Order. None of these legal remedies were pursued. Without use of the legal remedies that are available to ComEd, it is required to comply with Commission Orders.

Proposed Order at 167. If the Commission – as it should -- adopts the Proposed Order's conclusion, ComEd can seek clarification if it is unclear as to the Commission's intent in requiring that indirect uncollectible costs be segregated in its next rate case.

## **VIII. RATE DESIGN**

### **C. POTENTIALLY CONTESTED ISSUES**

#### **1. SFV (ComEd PROPOSAL)**

ComEd summarizes the Proposed Order's conclusions regarding its SFV proposal, concluding that several of the Proposed Order's statements regarding the SFV rate design are correct and supported by the record. ComEd BOE at 90-91. ComEd is alone in that belief as every other party that weighed in on the Proposed Order's SFV conclusion did not find the Proposed Order's rationale so compelling. As the City explained in its Brief on Exceptions (City BOE 13-18), the statements that ComEd asserts are correct are, in fact, contrary to the record and represent a radical change from the way the Commission set residential rates for decades. The overwhelming evidence in the case shows that the SFV rate design is defective in many respects.

Below is a recitation of the Proposed Order's statements that ComEd endorses. Below each statement is a brief explanation as to why ComEd and the Proposed Order are incorrect. Citations to the various parties' respective briefs on exceptions on each topic are included.

The Proposed Order correctly finds unconvincing the arguments by Staff and intervenors about the effect of SFV on the incentives to conserve electricity.

ComEd BOE at 90, *citing*, Proposed Order at 217.

This statement is thoroughly contradicted by the record. The record is replete with testimony and statements that higher fixed charges will deter people from investing in energy efficiency measures. *See*, City BOE at 11-13; Staff BOE at 82-83; CUB BOE at 49-50; AG BOE (Corr.) at 99-100; ELPC BOE at 9-13; NRDC BOE at 1-4.

The Proposed Order points to the Commission's decisions in Ameren and Nicor Gas, "which recognize the importance of recovering fixed costs predominantly through fixed charges." *Id.*

ComEd BOE at 90, *citing*, Proposed Order at 217.

This statement is not supported by the record. Several parties explained why Commission decisions approving SFV-type rate designs in gas utility cases are not relevant to the Commission's decision here. For example, in its Brief on Exceptions, the AG explained that the records in the gas utility cases showed that revenues were declining for those companies. That is not the case for ComEd. AG BOE (Corr.) at 101-102; *see also*, CUB BOE at 50-51.

The Proposed Order further finds that SFV does not shift risks to customers. [Proposed Order at 217.] It also finds that low-usage customers are not necessarily low income and that SFV is not an attempt to recover short term marginal costs.

ComEd BOE at 90, *citing*, Proposed Order at 217-18.

These statements are contravened by the record. As to the first two statements, although it is not clear, it appears that the Proposed Order is responding to arguments that adoption of the SFV rate design will fall heaviest on low-use customers. *See*, City BOE at 4-8; CUB BOE at 51-52; AG BOE (Corr.) at 98-99.

The Proposed Order's statement that the SFV rate design is "not an attempt to recover short-run marginal costs" is, as the NRDC explains, "a simplistic statement that ignores the more complicated nature of ComEd's proposal." NRDC BOE at 4. The record shows that the SFV rate design is an attempt to rehabilitate the discredited idea of Ramsey pricing. Reflexively insisting, as the Proposed Order does, that the SFV rate design does not base rates on short-run marginal costs does not make it so. *See*, City BOE at 10-11; NRDC BOE at 4-6.

In sum, contrary to ComEd's assertions, the Proposed Order's statements defending its conclusion adopting a modified version of ComEd's SFV proposal are not supported by the record. The Proposed Order's conclusion should be rejected.

## **VIII. RATE DESIGN**

### **C. Potentially Contested Issues**

#### **4. Non-Residential**

##### *d. Dusk-to-Dawn Street Lighting*

In its Brief on Exceptions, ComEd states that it does not agree with, but will not object to Proposed Order's adoption of the "Chicago Method" for calculating rates for the dusk-to-dawn street lighting class. ComEd BOE at 97-98. Having said that, in its Exceptions that were filed with its Brief on Exceptions, ComEd makes numerous changes to the Proposed Order's "Commission Analysis and Conclusions" section that are not supported by the record. ComEd Exceptions at 278-79.

First, ComEd deletes from the second paragraph of the "Commission Analysis and Conclusions" section the Proposed Order's sentence "Yet, there really is no evidence that ComEd employees ever make these connections." Proposed Order at 264. ComEd's Exceptions go on to make other modifications to that paragraph that dilute the Proposed Order's conclusion. ComEd's proposed changes are not warranted.

City witness Bodmer met with City engineers to discuss the process by which City residential and arterial street lights are connected to ComEd's system. City Ex. 1.0 at 46, LL 905-09. In his conversations with City engineers, Mr. Bodmer was surprised to learn that for as long as anyone could remember, City employees and contractors have been making the connection between the City wire and ComEd's facilities. *Id.* at 47, LL

910-14. Mr. Bodmer was told that because the City's experience is that ComEd cannot timely make the City-ComEd connection, the City has taken that job on itself. *Id.* at LL 914-20. Thus, ComEd does not incur any costs in connecting City street-lighting wire to the ComEd system. In fact, it is the City that incurs those costs.

The Proposed Order came to the correct conclusion on this point. ComEd's proposed changes to the second paragraph of the "Commission Analysis and Conclusions" section should be rejected.

Second, ComEd deletes the entire third paragraph of the "Commission Analysis and Conclusion" section. ComEd Exceptions at 278. That paragraph deals with the cost of secondary wire that ComEd uses to provide service to City street lights. The City explained in its Brief on Exceptions that the Proposed Order's conclusion that this cost should be \$0.00 is not supported by the record. City BOE at 19-21. ComEd does not provide its estimate as to what the cost of secondary wire should be. However, this was an area of dispute between the City and ComEd and, as explained in the City's Brief on Exceptions, the Commission should adopt Mr. Bodmer's recommended cost of \$1.78 per foot. *Id.* at 20-21.

ComEd's proposed modification to the Proposed Order on this point should be rejected. The City's exception and proposed modification are supported by the record and should be adopted.

Third, ComEd proposes changes to the fourth paragraph of the "Commission Analysis and Conclusion" section that should also be rejected. ComEd Exceptions at 278-79. In that paragraph, the Proposed Order concludes that the cross-examination of ComEd witness Alongi demonstrated that ComEd's estimate of the amount of secondary



wire used to serve City alley lights was grossly overstated. The Proposed Order's conclusion on this point is fully supported by the record. ComEd's recommended changes should be rejected.

## **XI. CONCLUSION**

For the reasons set forth in its Reply to Briefs on Exceptions, the City of Chicago respectfully requests that the Illinois Commerce Commission reject the exceptions discussed herein submitted by Commonwealth Edison Company and the Illinois Industrial Energy Consumers. In addition, the City of Chicago respectfully requests that the Illinois Commerce Commission modify the Proposed Order in this matter as set forth in the City's Brief on Exceptions filed on April 11, 2011.

Dated: April 18, 2011

Respectfully submitted,

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